

Spring 2012

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Firm News

The firm continues to support and promote local business via a number of initiatives.

Recent speakers at the **Business Xchange** include Margot James (Stourbridge MP) and Stewart Towe CBE (Chairman of The Hadley Group and the Black Country LEP). Further high profile business figures will be speaking throughout 2012.

Our sponsorship of **Dudley Kingswinford Rugby Club** continues to enable us to support and maintain close links with the local sporting community. This Season we invited professional contacts and clients of the firm to watch a competitive match with the Rugby Lions. Further match

sponsorship events will be held this year.

As part of our commitment to and advisors of the charity sector, we are also proud to be the joint sponsors of the **Charity Trustees & Investors Association (CTIA)**. The objective of the CTIA is to promote the awareness and knowledge of trustee and investment issues within the third sector. Regular "symposiums" are held during which we will present on topical legal issues alongside investment managers from Deutsch Bank, Quilter, Rathbones and Standard Life as well as representatives from Origin Financial.

The firm is also in contact with the **UK Trade & Investment** department to encourage and assist exporters to expand their overseas trade and advise businesses in bringing investment to the UK. The firm is able to provide exporters and importers with not only corporate legal support but also **Notary services**.

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Margot James MP



Stewart Towe CBE



Charity Trustees & Investors Association

Impact of the Olympic Games on business

The likely impact of the London 2012 Olympic and Paralympic Games on businesses can be seen from their sheer size: They are due to take place over a six-week period, and will be held in 34 venues, 10.8 million tickets have been issued. Such a huge event is likely to have a considerable impact on businesses.

Businesses in previous host countries have admitted that they underestimated the impact of the Olympics on them, both in terms of demand for goods and services, and how they could manage their staff and clients. It is therefore worth considering the legal implications of business interruption and the practical steps for businesses to take.

Business interruption threats come in many forms

including natural disasters, epidemics, terrorist attacks, political and economic changes and localised issues such as fire or flooding. With effective contractual provisions, business continuity planning and insurance, those issues can be managed.

Contractual liability. The basic position under English law is that contractual obligations are absolute. However, frustration automatically discharges a contract where there is a significant change of circumstances, which renders it physically or commercially impossible to perform the contract or would render contractual

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performance radically different from the obligations to which the parties originally agreed. In practice, though, the doctrine of frustration is narrowly constrained by the courts, especially with regards to leases of land, and is of limited practical value.

Most commercial contracts contain force majeure provisions, which are not based on the common law, but are contractual constructs. Force majeure provisions offer the parties greater flexibility in deciding how to deal with business continuity events. When negotiating, parties need to pay attention to any list of specified events to ensure that, in the circumstances, the events are true force majeure events.

Business continuity. Businesses need to ensure that they have adequate business continuity procedures in place to cope with the risk of major business interruptions. This is often required by their insurers. Listed companies are required by the UK Corporate Governance Code to maintain sound risk management and internal control systems.

Businesses should also consider what business continuity support they require from their suppliers and document that support in their supply contracts.

Generally, when business continuity support is contractually documented, then events or the consequences of events, which should have been prevented by the proper implementation of the business continuity support, are deemed not to be force majeure events.

Insurance planning. Insurance for business interruption is not sold as a standalone policy, but can be added to other insurance programmes. The spectrum of losses covered by such insurance tends to be narrower than the events comprising a standard definition of force majeure. In the UK, Pool Re covers terrorist actions that cause commercial property damage and consequent business interruption.

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*Philip specialises in company commercial law with a particular focus on transactional work and general commercial advice. Philip is also a **Notary Public**.*

Enterprise Zones

George Osborne in his March 2011 budget announced the introduction of enterprise zones across England and gave details of the first ten zones which included ones to be based in Birmingham and the Black Country.

In the Black Country it was decided that potential sites would be proposed by the Black Country Local Enterprise Partnership being a body made up of council leaders and business figures.

It was decided that The Black Country Enterprise Zone would focus on manufacturing and in particular the Local Enterprise Partnership was looking for them to become places of advanced manufacturing for the automotive and aerospace industries so as to encourage companies to relocate to the enterprise zone on a permanent basis.

It was announced at the end of August 2011 that there would be two enterprise zones in the Black Country; the I54 site in Wolverhampton being adjacent to Junction 2 of the M54 and a site at Darlaston adjacent to junction 9 of the M6. One of the contributing factors in choosing these locations was the existence of a good motorway link between the two sites. Shortly after the announcement of the location of the enterprise zones it was announced that Jaguar Land Rover would be locating their new engine plant on the I54 site.

There are various incentives for businesses relocating to enterprise zones including the following:-

1. 100% discount for business rates to any company that moves onto an enterprise zone before 2015. Councils will also be allowed to keep any increase in business rates coming from new employers giving them a direct financial incentive to support industry.
2. A lower level of planning control to help accelerate regeneration projects; Local Planning Authorities will be expected to streamline the procedures by suspending the usual planning restrictions in order to speed up the planning process.
3. Enhanced capital allowances on the costs of building or buying a commercial building on an enterprise zone.
4. Government support for high speed broadband being made available across the enterprise zone.

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Ruth handles a range of commercial property work for developers, industrial retail and other sectors.

Buying a business that is in administration

Often, the most effective way of realising value from the assets of a company in administration is to sell its business as a going concern.

The High Court has recently held that a clause in a sale contract that provided for any liabilities of the seller or the administrator to rank as an unsecured claim against the seller (rather than, for example, as an expense of the administration) was valid and effective. It is the first time that the court has considered the effectiveness of such a clause (which is a common feature of administration sale contracts).

The effectiveness of the clause means that a buyer will typically have limited recourse should the administrator or seller breach their obligations under a sale contract. This underlines the need for thorough due diligence and for the buyer to take responsibility for as much of the process of perfecting the sale as possible.

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Euthanasia for companies

If you have a company which you no longer need, because you are retiring or it never really got off the ground, how do you dispose of it? A company is a separate legal person so cannot simply die. Its life has to be ended in a formal manner.

If the company has any value, you can sell the shares in it to a third party. In that case the company continues in existence, but under new ownership. If the business it ran is sold, the assets of the company are then turned into cash and can be distributed to the shareholders in a tax-efficient manner, perhaps over several years, depending on the availability of tax allowances. At that stage the company will have no value, just as any new company which never traded has no value.

A company is terminated when it is struck off the Register. It is then dissolved. A new company can be started with the same name, but has a different registered number.

The procedure for voluntary strike-off is not an alternative to insolvency proceedings where those are appropriate. This is because creditors can apply for restoration to the Register, and there can still be a court order for the Company to be wound up. Nor is it possible if the Registrar has already started dissolution action (for a company which is not in operation or carrying on business). However, it can be a useful means of avoiding liability for late filing penalties if those are the only debts, as the Registrar will not pursue those unless the Company is restored to the Register. All other existing liabilities of officers and shareholders will continue.

The procedure requires there to have been 3 months without activity (apart from the disposal of assets once trading has ceased, settling debts and statutory compliance), including a change of name. All other

proceedings should have been concluded. It is a criminal offence to contravene these requirements, punishable by fine.

Once the Company is dissolved the assets pass to the Crown. So bank accounts should be closed (or they will be frozen) and domain names disposed of first. Form DS01 can then be signed by a majority of the directors and filed at Companies House, with the fee of £10.

A copy needs to be given within 7 days to all directors who have not made the application, shareholders, employees, creditors and pension Trustees. Any body which might be interested should also be notified, such as HM Revenue & Customs or the local planning authority (if there is an obligation on the Company under planning permission). The Registrar will wait 3 months after advertising the striking off to allow any objection. The application can be withdrawn if there are any proceedings started. After striking off, any claimant can apply for restoration within 6 years (3 years if they have a claim for personal injury) and the Registrar will allocate a new name if the old one has been taken in the meantime.

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John provides legal advice to clients regarding both their commercial property and commercial needs.

Property—repairing obligations

On 4th January 2011, as part of the Government's requirements to reduce CO2 emissions, air conditioning inspections, to be carried out by accredited assessors, became mandatory for air conditioning systems having an effective cooling output of more than 12kw.

Having an air conditioning system inspected by an energy assessor is designed to improve efficiency in the electrical consumption and operating costs, and reduce carbon emissions. The inspection is designed to highlight possible improvements to the operation of the existing system and highlight opportunities to replace older less energy efficient systems.

Various obligations are imposed on the responsible person being the person who controls the technical functioning of the air conditioning system and who is usually the owner or tenant of the premises:-

The responsible person must:-

Ensure an inspection has been undertaken in accordance with statutory requirements.

Keep a copy of the most recent inspection report.

Provide an inspection report when a building is sold or leased.

When purchasing or leasing premises one of the enquiries likely to be raised by your solicitor will ask for details of the air conditioning and for a copy of the latest report. If a buyer or tenant has not been given an inspection report then they must ensure that the system is inspected within three months of them taking over the property

Local authorities, usually via their trading standards officers, are responsible for enforcing the requirements. Failure to commission, keep or provide air conditioning inspection reports when required by the regulations, means you may be issued with a penalty which is currently fixed at £300.00.

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This update is intended only to provide a summary of the law and is not a comprehensive guide. It is not intended to provide legal advice for specific cases. If you would like specific advice please contact a member of the team.